

ROBERT E. FREITAS (SBN 80948)
rfreitas@fawlaw.com
JESSICA N. LEAL (SBN 267232)
jleal@fawlaw.com
FREITAS & WEINBERG LLP
350 Marine Parkway, Suite 200
Redwood Shores, California 94065
Telephone: (650) 593-6300
Facsimile: (650) 593-6301

Attorneys for Counterdefendant
Surbhi Sarna

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BOSTON SCIENTIFIC CORPORATION,
BOSTON SCIENTIFIC SCIMED, INC.
AND FORTIS ADVISORS LLC,

Plaintiffs,

v.

BIOCARDIA, INC.,

Defendant.

No. 3:19-cv-05645-VC

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF SURBHI SARNA'S
OPPOSITION TO BIOCARDIA, INC.'S
MOTION TO AMEND SCHEDULING
ORDER AND FOR LEAVE TO FILE
SECOND AMENDED ANSWER TO
COMPLAINT AND COUNTERCLAIMS**

Date: May 7, 2020
Time: 10:00 a.m.
Ct rm: 3, 17th Floor
Judge: Hon. Vince Chhabria

BIOCARDIA, INC.,

Counterclaimant,

v.

BOSTON SCIENTIFIC CORPORATION,
BOSTON SCIENTIFIC SCIMED, INC.
AND FORTIS ADVISORS LLC, AND
SURBHI SARNA,

Counterdefendants.

TO THE COURT, ALL PARTIES AND COUNSEL OF RECORD:

Pursuant to Federal Rule of Evidence 201 and relevant case law regarding judicial notice, in opposition to BioCardia, Inc.'s Motion to Amend Scheduling Order and For Leave to File Second Amended Answer to Complaint and Counterclaims, Surbhi Sarna hereby requests the Court to take judicial notice of the Certificate of Merger memorializing the merger of Clarity Merger Corp. and nVision Medical Corporation. This document was certified by the Secretary of State of the State of Delaware on April 13, 2018. BioCardia's proposed Second Amended Complaint refers to the merger described in this Certificate of Merger. A copy of the document for which Ms. Sarna seeks judicial notice is attached hereto as Exhibit A.

According to Federal Rule of Evidence 201, a court "may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). A court "must take judicial notice if a party requests it and the court is supplied with the necessary information." Fed. R. Evid. 201(c).

Certificates of Merger are a proper subject of judicial notice. *See, e.g., Lindsey v. United Airlines, Inc.*, 2017 U.S. Dist. LEXIS 85154, *14-15, 2017 WL 2404911 (N.D. Cal. June 3, 2017) (granting both a request for judicial notice of a certificate of merger and a motion to dismiss); *Bullwinkle v. U.S. Bank, Nat'l Ass'n*, 2013 U.S. Dist. LEXIS 151220, *8 n. 3, 2013 WL 5718451 (N.D. Cal. Oct. 21, 2013) (a certificate of merger "is a public record whose accuracy cannot reasonably be questioned"); *Russell v. NCAA*, 2012 U.S. Dist. LEXIS 68684, *10 n. 1, 2012 WL 1747496 (N.D. Cal. May 16, 2012); *DeLeon v. Wells Fargo Bank, N.A.*, 2010 U.S. Dist. LEXIS 112941, *8, 2010 WL 4285006 (N.D. Cal. Oct. 22, 2010).

Dated: April 16, 2020

ROBERT E. FREITAS
JESSICA N. LEAL
FREITAS & WEINBERG LLP

/s/Jessica N. Leal
Jessica N. Leal
Attorneys for Counter-Defendant
Surbhi Sarna